



**Issue Date: 23 August 2012**

CASE NO. 2011-STA-00047

***In the Matter of:***

MICHAEL HAYDEN,  
Complainant,

v.

DAVID DAWE,  
d/b/a THREE AND ONE TRANSPORT,  
Respondent.

**DECISION AND ORDER DISMISSING COMPLAINT**

On August 2, 2012, I issued an Order to Show Cause why this matter should not be dismissed for failure to prosecute, failure to comply with my earlier order regarding discovery issues, or both. Complainant Michael Hayden was ordered to fully explain his failure to comply with my order of July 17, 2012 requiring him to answer Respondent's interrogatories and requests for production of documents, and to fully explain his apparent failure to cooperate in the scheduling of his discovery, and was given until August 17, 2012 to do so. Complainant has failed to respond to the Order to Show Cause.

I find that Complainant has violated my order of July 17, 2012 in all particulars. I find that Complainant has violated my order of August 2, 2012 to show cause why this case should not be dismissed. I find that Complainant has, separate and apart from violating my orders, failed to prosecute this matter by failing to respond to discovery requests and by failing to cooperate in the scheduling of his deposition.

Under the Rules of Practice and Procedure Before the Office of Administrative Law Judges, 29 C.F.R. Part 18, the presiding ALJ has the authority to render a decision against a party who fails to comply with an order of an ALJ.<sup>1</sup> Thus, I am authorized to dismiss this case based on Mr. Hayden's failure to comply with my orders of July 17, 2012 and August 2, 2012. The Rules also permit the presiding ALJ to take actions necessary to conduct fair and impartial hearings.<sup>2</sup> Mr. Hayden's failure to answer Respondent's discovery requests and his failure to schedule and answer questions at a deposition substantially and unfairly prejudiced Respondent's ability to prepare for a hearing scheduled to begin on August 30, 2012.

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<sup>1</sup> 29 C.F.R. § 18.6(d)(2)(v).

<sup>2</sup> 29 C.F.R. § 18.29(a)(1-9).

## **ORDER**

Based on the foregoing, IT IS ORDERED that the complaint of Complainant Michael Hayden is DISMISSED.

**SO ORDERED.**

**A**

PAUL C. JOHNSON, JR.  
Associate Chief Administrative Law Judge

**NOTICE OF APPEAL RIGHTS:** To appeal, you must file a Petition for Review ("Petition") with the Administrative Review Board ("Board") within fourteen (14) days of the date of issuance of the administrative law judge's decision. The Board's address is: Administrative Review Board, U.S. Department of Labor, Suite S-5220, 200 Constitution Avenue, NW, Washington DC 20210. In addition to filing your Petition for Review with the Board at the foregoing address, an electronic copy of the Petition may be filed by e-mail with the Board, to the attention of the Clerk of the Board, at the following e-mail address: ARB-Correspondence@dol.gov.

Your Petition is considered filed on the date of its postmark, facsimile transmittal, or e-mail communication; but if you file it in person, by hand-delivery or other means, it is filed when the Board receives it. *See* 29 C.F.R. § 1978.110(a). Your Petition must specifically identify the findings, conclusions or orders to which you object. You may be found to have waived any objections you do not raise specifically. *See* 29 C.F.R. § 1978.110(a).

At the time you file the Petition with the Board, you must serve it on all parties as well as the Chief Administrative Law Judge, U.S. Department of Labor, Office of Administrative Law Judges, 800 K Street, NW, Suite 400-North, Washington, DC 20001-8002. You must also serve the Assistant Secretary, Occupational Safety and Health Administration and, in cases in which the Assistant Secretary is a party, on the Associate Solicitor for Occupational Safety and Health. *See* 29 C.F.R. § 1978.110(a).

You must file an original and four copies of the petition for review with the Board, together with one copy of this decision. In addition, within 30 calendar days of filing the petition for review you must file with the Board: (1) an original and four copies of a supporting legal brief of points and authorities, not to exceed thirty double-spaced typed pages, and (2) an appendix (one copy only) consisting of relevant excerpts of the record of the proceedings from which the appeal is taken, upon which you rely in support of your petition for review.

Any response in opposition to a petition for review must be filed with the Board within 30 calendar days from the date of filing of the petitioning party's supporting legal brief of points and authorities. The response in opposition to the petition for review must include: (1) an original and four copies of the responding party's legal brief of points and authorities in opposition to the petition, not to exceed thirty double-spaced typed pages, and (2) an appendix

(one copy only) consisting of relevant excerpts of the record of the proceedings from which appeal has been taken, upon which the responding party relies, unless the responding party expressly stipulates in writing to the adequacy of the appendix submitted by the petitioning party.

Upon receipt of a legal brief filed in opposition to a petition for review, the petitioning party may file a reply brief (original and four copies), not to exceed ten double-spaced typed pages, within such time period as may be ordered by the Board.

If no Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor pursuant to 29 C.F.R. §§ 1978.109(e) and 1978.110(b). Even if a Petition is timely filed, the administrative law judge's decision becomes the final order of the Secretary of Labor unless the Board issues an order within thirty (30) days of the date the Petition is filed notifying the parties that it has accepted the case for review. *See* 29 C.F.R. § 1978.110(b).